so considerable, as may be found in most of the fashionable productions of the English literature of the day. Nor is mere grammatical correctness its sole merit. It is possible, as every scholar knows, that a translation, without violating the sense of a single passage, should amount, after all, to anything but a faithful image of the literary character of the original. The *tone* of Count de Maistre's mode of writing is one of its great merits, and this is very successfully reproduced by M. de Wallenstein.

ART. XIII.—*Report from the Commissioners appointed to Revise the Statute Laws of the State of New York, prepared in Obedience to a Resolution of the Honorable the Assembly. Communicated March* 15, 1826. pp. 112. Albany.

THERE are few questions of internal improvement, upon which sound and liberal minds are more divided among us, than upon the expediency and practicability of substituting a general code for the whole mass of common and statute law. We cannot pretend to much consistency in our own pages upon this topic, having already found occasion, as has happened to some lawyers, to argue both sides of the case, before the question is well settled. There is no great evil in this, as respects ourselves or the public, since we do not set up for an inflexible character of individuality; and as in regard to matters of commerce between men, it is more important to the community that the rules of law be plain and certain, than what those rules may be, so upon general questions of policy and morals, it is far more important that they should be well discussed, than that this or that set of opinions should be uniformly maintained in a journal.

The sense of the profession in this country, we think, is against this great scheme of legal reform. Technical jurists are probably less sensitive than others to the alleged inconveniences of the present system; they are at any rate better aware of the difficulties and dangers of the proposed change; and they perhaps feel a more solemn attachment to the venerable fabric of the common law, which has sheltered and protected them and their ancestors for a thousand years. Even from the profession, however, we do not hear an undivided voice. On the contrary,

learned and eminent counsellors are ranged on both sides of the controversy; and in Louisiana, where the task has been entered upon, under the sanction of legislative authority, and is now prosecuting with great zeal, the code has nevertheless been attacked, and is defended with a warmth approaching to bitterness. If we may be allowed to exercise a little of the spirit of prophecy, we think we can perceive in this the coming shadow of a mighty war. The Louisianian controversy we take to be the beginning of a legal feud, which is not to be kept within the narrow pale of a State sovereignty, or bounded by the banks of the Mississippi. Codes are to be proposed, discussed, assailed, defended, throughout the union; and we look to see the day, when *codifiers* and *anticodifiers* will wage a war as fierce and interminable, as that which raged of yore between the Doctors of Admiralty and his Majesty's servants of King's Bench. We do not mean to hasten hostilities; and having already given our opinion on each side, we choose now to reserve ourselves for decided measures, until we shall have an opportunity of witnessing the affray, and putting out our strength to some purpose on the best side.

The subject presented to our consideration by the pamphlet before us, is of a very different character, or at least of a more limited extent, presenting a question respecting which, in the abstract, there will doubtless be far less diversity of opinion among professional men. We cannot suggest it to the reader's mind more profitably, than by a short history of the origin of this pamphlet, and a statement of its contents. It will be recollected, that in 1824, the people of New York revised and made some considerable changes in their State constitution; consequently some alterations of their statutes became necessary; and by an act of the legislature passed on the 27th of November, 1824, three commissioners were appointed to prepare a revised edition of the general laws, with such amendments as might be conformable to the new constitutional requisitions. By an additional act passed on the 21st of April, 1825, the powers of these commissioners were much enlarged; they were authorized to consolidate all acts and parts of acts relating to similar subjects; to distribute the revised and consolidated acts methodically under proper titles and divisions; to omit what had been repealed, or had expired, or was repugnant to the constitution; to suggest the best mode of reconciling apparent contradictions, and supplying defects, and amending what needed

amendment; to designate what ought to be repealed as mischievous or useless, and recommend the passage of such new acts as might either be advantageous in themselves, or necessary to the system; and finally to complete the revision in all other respects in such manner as they might think expedient, in order to render the laws more plain and easy to be understood; and they are required moreover to lay portions of the revised and newly arranged acts before the Assembly, from time to time, to be examined, and if approved, to be made laws.

This extensive, and, as some think, dangerous power, was confided to able hands. The commissioners appointed under the first act were Erastus Root and Benjamin Butler, together with the learned exchancellor Kent. This last gentleman having declined the trust, John Duer was appointed in his room. Mr Root afterwards resigned his place at the board, and it was filled by Mr Wheaton, the well known and indefatigable reporter of the Supreme Court of the United States.

This pamphlet is the first report of the commissioners, prepared in obedience to a resolution of the Assembly, calling upon them to exhibit an account of their progress, and state when they should probably be in readiness for a final report. It contains some account of the labor they have hitherto accomplished, with a partial exhibition of its result. The first steps, of course, were to make a classification of the subjects of the public laws, and a brief analysis or digest of the whole, according to their proposed scheme. A subdivision of the first class of laws into a convenient number of chapters was next effected; and after this the commissioners proceeded to prepare particular chapters at large, subdividing each still farther into convenient articles and sections. A considerable portion of the first great division has been thus prepared in something less than a year from the commencement of their labors, and was ready to be presented to the legislature in March last. But the commissioners justly esteem it important, considering the natural connexion which exists between its chapters, that the whole of this part be completed, before any portion of it shall be reported for consideration and enactment. As a specimen of their work, however, they subjoin two complete chapters; the first, containing the whole proposed statute law, regarding 'elections other than for town officers;' the second, respecting the 'powers, duties, and disabilities of towns.' To these are appended a collection of the principal existing laws on those subjects, as they now stand

in the Statute Book; so that the reader has a fair opportunity of instituting a comparison between the new and the old, and of noting the character of the changes and innovations, which the revisers may have introduced.

That the convenience and utilityof the plan may be more extensively understood, we suppose it may be useful for us to present to our readers, distinctly, a general view of the sources and condition of the existing law of New York, a brief history of her legislation on the subject matter of the proposed code, and a more particular analysis of it as exhibited by the present commissioners.

The law of New York, as of most of the United States, has for its basis the common law of England. By the thirtyfifth article of her Constitution, the Convention of 1777, 'by the authority of the good people of the State, ordain, determine, and declare, that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the Colony of New York, as together did form the law of the said Colony on the 19th of April, 1775, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall from time to time make concerning the same;' excepting, however, such laws as regarded the ecclesiastical establishment of England, or the preservation of allegiance to the British crown, or such as were otherwise repugnant to the provisions of the Constitution. This was little more than declaring, that the laws of the Colony, whencesoever derived, should continue in force, until altered or abrogated by the legislative will. The statutes enacted by the British Parliament seldom extended in express terms to the plantations, and had consequently no intrinsic authority over them. So much of the statute law of England, as was created before the colonization of America, may, throughout the States, be considered as having been originally imported into the country by our English ancestors. They brought with them for their common law the existing law of the mother country, whether written or unwritten, rejecting only such parts as applied exclusively to a condition of things not known, or incapable of existence on this side of the Atlantic. To these are commonly added those British statutes of later growth, which have been considered declaratory or emendatory of the English common law, and as therefore naturally incorporating themselves into the unwritten law of the Colonies; and a few others, not coming

strictly within this class, may have been adopted with no other sanction than tacit consent and general conformity. Local usages, morever, must have existed in this as in the other Colonies; some of which may have had their origin in the notions of law, which were brought by the Dutch settlers from the continent of Europe, or in obsolete ordinances of the early colonial authorities; and others must naturally have grown out of the condition and circumstances of the people, at different periods of their colonial history. These particular customs, with the vast accession made to the common law of England by the rapid growth of commerce, and consequent adoption in the courts of entire new systems of maritime and commercial jurisprudence, probably completed the body of the common law, existing in New York at the era of the American Revolution. We are not sufficiently conversant with the niceties of local law in New York, to know how extensive was the above supposed infusion of continental law from a Dutch original, or how much of it can still be distinctly traced. The Dutch articles of capitulation of 1664, confirmed by treaty ten years after, expressly provide, among other things, that 'the Dutch shall enjoy their own customs concerning their *inheritances;*' but the Charter of Liberties, promulgated by the first colonial assembly, in 1683, settles, that an estate of inheritance *in lands* shall thenceforward be 'according to the customs and practice of his Majesty's realm of England;' and the Constitution of 1777, before cited, seems to allow no operation to existing usages as a part of the law of the land, excepting such as either appertained to the common law of England, or had received express sanction from colonial legislation. Yet the same act of the people, which admitted the common law of England, itself a curious aggregate of usages, customs, traditions, and adjudications, to prescribe to them their rules of civil conduct, could hardly have excluded, by mere implication, the particular customs of the Colony; and we cannot suppose, that while the traces of this foreign origin are yet distinctly visible in other relations, its impress should have been utterly obliterated from the whole body of the laws of this people.

Such being the condition of the common law of New York at the time of the Revolution, we are not aware that it has since undergone any greater change, than what may be called its natural growth by new combinations and applications of its principles, or else such limited alterations as belong to

the usual progress of legislation, in this country, except, that by an act passed in 1788, entitled 'an act for the amendment of the law, and the better advancement of justice,' it was enacted, 'that none of the statutes of England, or Great Britain, shall be considered as laws of this State.' It would be a delicate task, and somewhat foreign to our present purpose, to consider how far this general repudiation of the English statutes fairly extends, and what effect it has had, if any, upon the common law of the State, as existing at the time of its formation; and whether it has really been, conformably to the title of the act, an amendment of the law, and calculated for the better advancement of justice.

The statute law now in force in New York, is, of course, composed of the Constitution, treaties, and public laws of the United States, and the acts of its own State legislature. These last, with the exception of local and private acts, are in a great measure derived from British statutes of a date preceding the Revolution; in many instances they are copied verbatim from the English Statute Book, and in others its provisions are adopted with slight alterations of phraseology. The colonial statutes, declared by the Constitution to be a part of the law of the State, have never been rejected, like the British statutes, *en masse;* many, on the contrary, have been formally reenacted; and others probably mingle, unseen, in the current of legislation, and still have a silent operation in pointing out the just construction of existing laws. A large body of new statute law must, of course, have been the immediate growth of the Revolution. Government was to be organized; courts were to be instituted; the administration of justice, civil and criminal, was to be regulated; forms of process and of judicial proceedings to be provided; the whole future course of legislation and judicature to be determined. This sudden influx of new matter, somewhat hastily contrived for the present exigency, must, of course, have led to many errors and imperfections, which were to be remedied from time to time, as experience should suggest them, by additional acts, modifying the former provisions, or wholly repealing them, and substituting something new, destined itself probably to be in like manner the subject of future amendments, additions, and repeals; for 'it is most certain,' says a learned judge, who was more attentive to his law than his grammar, 'that time and long experience *is* much more ingenious, subtil, and judicious, than all the wisest and acutest wits in the

world coexisting can be.' Besides supplying the defects and repairing the errors necessarily incident to first experiments in legislation, the unexampled prosperity of the nation, and of no part of it more than this distinguished State, the almost incredible growth of population, and immense extension of commerce, a vast and rapid accumulation of wealth, wonderful inventions and discoveries in mechanics and the arts, great public schemes of internal improvement, and innumerable private associations for the employment and security of large capitals in trade and manufactures, have for these forty years past combined to create a real demand for new laws, adapted to the improved condition and modern exigencies of society. It would have been well for the community, and a great relief to courts and counsellors, as well as to revisers and digesters, if the growth of the Statute Book, had arisen wholly from such causes, and only kept pace with the natural demand. But the frequency of popular elections, the minute representation of sectional interests, and the Athenian fondness for novelty among us, have given rise to a very mischievous facility of legislation.

It is notorious that a great proportion of the changes made in our public laws, even those of the most important and extensive operation, are made for particular cases, and are sometimes very ill adapted for any other. It is equally notorious, that an act of incorporation is commonly granted to any set of men, who ask it, for almost any purpose, and with almost any powers, which they are pleased to have inserted in their bill. We do not mean to insinuate, that this is owing to improper influences; although there has been a shrewd suspicion of such operating, in one or two cases, to a small extent upon the legislature of New York. We apprehend that such instances, if they exist in any legislature of the Union, are extremely rare; but we think there is in all of them a slovenly and careless mode of legislating, to a degree almost as culpable; for it is a good maxim of the common law, that gross *laches* is tantamount to fraud. Private bills are commonly drafted by the petitioner, or his counsel; are often read by their titles only, and pass, almost of course, without amendment, and in fact without any effectual notice of their contents to the house. Important changes of general laws, to subserve a particular, though perhaps honest end, are sometimes artfully thrust in by their friends among the matters of little moment, to be hurried through, at the end of a session, without debate, and consequently often without due intelli-

gence of their necessary operation; and in other cases, where the principles of a law have been fairly discussed and are well understood, the acts themselves are yet so inartificially and inaccurately penned as to beget great doubt and uncertainty of their true intent; giving rise to perpetual litigation and innumerable emendatory acts. The legislators themselves are often as much surprised as the courts, to find what has become law; and the chief business of each succeeding legislature is to patch up or repeal, what was ill done by its immediate predecessor.

These remarks are not intended to apply to New York alone; they are quite as true, perhaps more so, of other State legislatures; and, indeed, the whole foregoing history of the origin, progress, and condition, both of the common and statute law of New York, is, with little exception, a history of the law of all the other States of the old confederation.

If our statements are not greatly overcharged, it can readily be imagined what a mass of useless rubbish a few years of such legislation must accumulate in the Statute Book; how many acts are to be consulted, and how many doubts of construction resolved, before the most experienced lawyer can instruct his client in what ought to be so plain a matter as the operation of the written law; and how necessary some system of revision and consolidation must from time to time become.

There are few, if any, of the States in which something of this sort, more or less extensive, has not been attempted. In some of of their legislative assemblies, as in the Congress of the United States and the British Parliament, all acts relative to the same subject are occasionally reviewed and consolidated into one, with such amendments as experience of their practical operation may have suggested. In others, the whole Statute Book has been put into the hands of commissioners to be arranged for reenactment. Virginia, especially, deserves great praise, both as a Colony and a State, for her uniform attention to the reformation and republication of her statute laws. She has made, according to the statement of Mr Henning, who, as a reporter of her courts and a reviser of her laws, is well known to the profession generally, no less than twelve entire revisions; the first of them as early as 1632; the last in 1808. She has besides, under the superintendence of the gentleman abovementioned, recently achieved a great work, of a different character indeed, but sufficiently connected with our topic to allow us to notice it, as one of great importance to the history of the country, as well as the

administration of her own municipal law. We allude to the publication of her 'Statutes at Large; being a Collection of all the Laws of Virginia from the First Session of the Legislature in 1619;' occupying thirteen octavo volumes, of five or six hundred pages each. No similar work has as yet been attempted in any other State. Maine also deserves commendation for embracing the opportunity afforded by her erection into a separate State, to make great improvements in the Statute Book of Massachusetts. One of her first acts was to appoint a Board of Jurisprudence, consisting of eminent lawyers, to superintend the publication of the laws, with authority to classify and arrange the whole as to them might appear most convenient. They pursued the authority given them by consolidating all laws then in force relative to the same subject, and rejecting all which were repugnant and contradictory, so as to comprise the whole in a single moderate volume, containing everything useful for ordinary purposes, which was to be found in the four volumes then existing of Massachusetts laws. Massachusetts, we regret to say, has done less in this matter than she might have done with perfect safety and great usefulness. There has been no extensive revision of her laws for more than forty years; nor any preceding the last for more than a century. We, of course, do not consider mere collections and republications, by authority, as revisions. The collection of Ancient Charters and General Laws of the Colony and Province of Massachusetts Bay, in a single volume, though highly valuable to the historian, and perfectly convenient to the profession, is still but a meagre substitute, as a collection of legal and historical documents, for the statutes at large. The last edition of the General Laws of the Commonwealth, from the adoption of the Constitution, though published after the publication of the Laws of Maine, has none of the improvements of that book, but consists of two considerable volumes, and abounds in acts additional, restraining, extending, repealing, restoring, and rerepealing, without consolidation or method, other than belongs to chronological arrangement, and frequent references from act to act. The fault is in the authority given; not in the execution of the task.

But it is time to advert again to the laws of New York. 'The era of legislation,' as it has been called, in that Colony, was 1683. But the colonial acts of that and several subsequent years, with a few exceptions, are not to be found in any printed edition of the laws extant; and it is stated by learned gentlemen,

who had occasion to make the research in 1813, that but few of them are preserved in the Secretary's office. The earliest edition known of the colonial laws, is Bradford's, published in 1710, and containing the laws from 1691. He published another edition in 1726, bringing the laws down to that time. In 1762, the colonial laws then in force, were collected, revised, and published under the authority of the General Assembly, by William Smith, Junior, and William Livingston. Another authoritative revision and republication of the colonial laws took place in 1774. The first revision and collection of the laws of the *State* of New York, was published in 1789, by Samuel Jones and Richard Varrick, containing, in two volumes, the laws passed from the adoption of the Constitution in 1777, and an appendix of certain colonial laws. No other general revision by direction of the legislature took place until 1801, when James Kent, the late Chancellor, then Chief Justice, and Jacob Radcliff, then a Justice of the Supreme Court, were appointed 'to prepare for the press, and to cause to be printed in as many volumes, and under such heads, or divisions, as they shall think proper, all the acts and parts of acts of the legislature of this State *now in force.*' This labor was accomplished in two volumes, published the following year, and commonly known in the reports as the *Revised Laws* of New York. These took effect from the 1st of October, 1801, from which time all acts and parts of acts, coming within the purview and operation of the revised acts, were repealed. In 1813, a similar authority to revise and arrange the laws, was conferred on William P. Van Ness and John Woodworth; and the result of their labors, exhibiting the actual state of the statute law of New York at that date, appears likewise in two volumes, published the same year. This edition, commonly known as the *New Revised Laws*, contains references to all the preceding editions of Colonial and State laws, to the English and British acts of Parliament, *in pari materiâ*, and also to the English and American reporters upon points of construction. Both in this edition and that of Messrs Kent and Radcliff, all the provisions then in force relating to the same particular, are consolidated into separate acts; but there is little attempt at a scientific arrangement or classification of the subjects. A considerable accumulation of laws, passed since 1813, must now remain wholly without arrangement; yet what has been done by the former revisers will doubtless abridge considerably the labors of the present commissioners, whose plan, as developed in the Report, we now propose to consider.

The whole Statute Book is divided into five parts, arranging and classifying the laws as follows.

'I. Those which relate to the territory; the political divisions; the civil polity; and the internal administration of the State.

'II. Those which relate to the acquisition, the enjoyment, and the transmission of property, real and personal; to the domestic relations; and generally to all matters connected with private rights.

'III. Those which relate to the judiciary establishments, and the mode of procedure in civil cases.

'IV. Those which relate to crimes and punishments; to the mode of procedure in criminal cases; and to prison discipline.

'V. Public laws of a local and miscellaneous character; including the laws concerning the city of New York; acts incorporating cities and villages; and such other acts of incorporation as it may be deemed necessary to publish.' p. 7.

This general arrangement, borrowed apparently from Blackstone, is simple, and adequate to its end.

The first part is then subdivided into nineteen chapters, the titles of which sufficiently indicate the nature of the classification.

'Chapter I, to be entitled, Of the boundaries of the State and its territorial jurisdiction.

II. Of the civil divisions of the State.

III. Of the census, or enumeration of the inhabitants of the State.

IV. Of the public officers, their qualifications, privileges, and disabilities; the mode of their election or appointment; and the tenure of their respective offices.

V. Of elections other than for town officers.

VI. Of the duties, privileges, and disabilities of the legislative and principal executive officers of the State.

VII. Of the powers, duties, and privileges of towns.

VIII. Of the powers, duties, and privileges of counties.

IX. Of the salaries and fees of the several offices of this State, except those connected with the judiciary.

X. Of the public property and the funds of the State.

XI. Of the assessment and collection of taxes.

XII. Of the militia, and the public defence.

XIII. Of the public health.

XIV. Of public instruction.

XV. Of agriculture, trade, and manufactures.

XVI. Of highways and bridges.

XVII. Of ferries.

XVIII. Of the internal police of the State.

XIX. Of the publication and construction of the statutes of this State.' pp. 9—12

We regret, that our limits will not allow us to extract one of the chapters, exhibited in the pamphlet as a specimen, entire. We can, however, briefly exhibit something of the mode of farther subdivision. Chapter VII. 'Of the powers, duties, and privileges of towns,' is distributed under six titles.

'Title I. Of the powers and rights of towns as bodies politic, and the mode of exercising them.

Title II. Of town meetings, and the time, purposes, and manner of holding the same.

Title III. Of the qualifications of town officers, and the tenure of their offices.

Title IV. Of vacancies in town offices, and the mode of supplying them.

Title V. Of the duties of certain town officers.

Title VI. Of town charges, and the mode of defraying them.'

Some of these titles are again subdivided into several articles; and each article, or title not divided into articles, is again subdivided into sections. Title II. for instance, consists of the four following articles.

'Article I. Of annual and special town meetings.'

This article directs when and where the meetings shall be held; what officers shall be chosen; what notice shall be given; and defines the powers of the electors at such meetings.

'Article II. Of the mode of conducting town meetings.'

This article directs, who shall preside at such meetings; defines the powers of the presiding officers; prescribes the duties of the clerk; fixes the duration of the meeting, the mode of determining questions by vote, &c.

'Article III. of the election of town officers.'

This directs the manner in which the polls shall be opened and closed, the form of the ballot, the mode of counting, and declaring, and recording the votes.

'Article IV. contains all such miscellaneous and local provisions concerning town meetings as could not well be disposed of under the foregoing heads.'

As a short specimen of the phraseology, we will cite the whole of the first title of this chapter.

'1. Each town in this State is a body politic, and as such has capacity

'To sue and be sued, in the manner prescribed in the laws of this State;

'To purchase and hold lands within its own limits, and for the use of its inhabitants; subject to the power of the legislature over such limits;

'To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers;

'And to make such orders for the disposition, regulation, or use of its corporate property, as may be deemed conducive to the interest of its inhabitants.

'2. No town shall possess or exercise any corporate powers, except such as are enumerated in this chapter; or shall be specially given by law; or shall be necessary to the exercise of the powers so enumerated or given.

'3. All acts and proceedings by or against a town, in its corporate capacity, shall be in the name of such town; but every conveyance of lands within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.

'4. The powers of a town, as a body politic, can only be exercised in town meeting, or in pursuance of a resolution there adopted.'

No enacting clause is proposed to be introduced, excepting at the beginning of each of the five general divisions, where it is preceded by a short preamble, setting forth the expediency of simplifying, consolidating, arranging, and amending the statutes relative to the subjects of that division.

The commissioners have not yet proceeded in their analysis beyond the first general division, the preparation of which, with the necessary preliminary studies and inquiries, they state had furnished them sufficient employment between the periods of their appointment and of the report. Indeed they add, that more than three fourths of the existing public statutes fall under this head, now occupying nearly one thousand two hundred pages, which they hope to reduce, however, notwithstanding the addition of many new provisions, to about half their present extent. The task they have undertaken, with the scrupulous fidelity of execution, which we doubt not belongs to them, is indeed a prodigious labor not to be accomplished in a day. Some of its intrinsic difficulties cannot be better set forth than in their own words.

'In the progress of the work, many changes in the arrange-

ment originally contemplated; frequent transpositions in the order of the subjects; and new divisions and subdivisions of the different parts, became necessary. It is not until successive experiments have been actually made, that it can be satisfactorily ascertained, under what general head the subjects of some of the acts, may most properly be comprised. But the most serious portion of our labor is the drawing up of the text itself. To reduce the sections to a proper brevity; to distribute them in a suitable manner; and to simplify the language in which they are written; it becomes absolutely necessary to write the whole with our own hands, and often to give our draughts several revisions, before we can so far satisfy ourselves, in regard to arrangement and expression, as to authorise the employment of a copyist. We can therefore derive but little aid from clerks or amanuenses; nor have we thought it consistent with the great importance of the trust confided to us, to leave to any one of our number exclusively, the completion of any part of the work, though by such a division of labor, our progress might have been hastened. To preserve uniformity of expression, and to make our performances in every sense of the words, joint and several, we have adopted the plan of alloting to each other, from time to time, convenient portions of the statutes; of committing the draughts prepared by each to the separate and critical revisal of the others; and then of subjecting them to the joint examination of all.' p. 14.

From the brief outline we have given of this scheme, and the foregoing account of labor bestowed upon it by the commissioners, the professional reader can duly estimate the magnitude of the task, and perceive at once the great practical convenience of a code so digested, by such hands, when compared with the clumsy and confused mass of contradictory materials, which now encumbers our statute books. For the difficulty is hardly less with us, than it was with the English in the time of James; and Lord Bacon, in his proposal to that monarch, for the amending of the laws of his realm, takes occasion to press upon his Majesty a vigorous *argumentum ad hominem*, by reminding him, that 'there is such an accumulation of statutes concerning one matter, and they so cross and intricate, as the certainty of the law is lost in the heap; as your Majesty had occasion to experience last day upon the point, whether the incendiary of Newmarket should have the benefit of his clergy.' Still there is always room to fear, that in the general methodizing and amending even of the statute law alone, too much of substance may be sacrificed to mere method; or rather too much

new law may be suddenly introduced, from the great temptation of filling out a noble outline and erecting a perfect system; in short, there is some reason to fear lest systematizing should degenerate into absolute codification. It is remarkable that two such minds, as those of Lord Bacon and Lord Hale, should have concurred, at periods when many of the evils they complain of were certainly less sensibly felt, than at the present day, not only in favorable disposition towards what may be called moderate reform in the law, but in devoting themselves to consideration of the means by which it might best be effected. Indeed the latter, as far as we can gather from his preface to Rolle's Abridgment, seems to have contemplated the formation of a sort of *corpus juris communis* 'out of the many books of our English laws, for the public use, and for the contracting of the laws into a narrower compass and method.' Perhaps, however, regarding the extreme jealousy of innovation, which he elsewhere expresses, we should understand him here as intending nothing more than was proposed by Lord Bacon; whose plan, in regard to the common law, was first, to compile a select volume of forms and precedents from the ancient rolls; secondly, to make a perfect collection of adjudged cases, omitting all that were doubted or overruled, or mere repetitions of former decisions, or which were entirely antiquated and obsolete, as well as 'all idle queries, which are but seminaries of doubts and uncertainties,' and reducing into a compendious form such as were reported with unnecessary prolixity; thirdly, to form a book of institutes, and a few other auxiliaries to the study of the law, which he probably would not have thought necessary to propose, had he lived to the days of Sir William Blackstone, certainly not had he seen all the labor saving machines of the present age. In regard to the statutes, his design was simply to repeal and discard from the books all that were dormant or obsolete, to mitigate the penalties of many, and to consolidate into one clear and uniform law all those which regarded like subjects. The most strenuous opposer of codes would hardly disagree to these modes of amendment.

But the gentlemen of New York are going a step farther, in regard to the reformation of the statute law. They propose, not merely a consolidation, but an entire new order of arrangement, accompanied by changes of phraseology, with a view to greater clearness and precision, and even by provisions wholly new, to supply and remedy what are in their judgment palpable

omissions and imperfections. The title, for instance, which we have cited at length, does not contain a single sentence, nor indeed a single provision, which is to be found in any former volume of the laws; on the contrary, the first section is avowedly extracted from a decision of the Chancery Court of the State; the third section was suggested by decisions at common law, establishing certain principles in regard to counties, 'that would probably be extended to towns under like circumstances;' and the other two sections are wholly their own. Now it must be confessed, that this is exercising the powers confided to them in their greatest latitude; and it is not wonderful, that those who are timid on the subject of innovation, or at least abundantly careful, that every change of the laws 'be demonstrable to be for the better, and such as cannot introduce any considerable inconvenience in the other end of the wallet,' should be somewhat apprehensive of unforeseen consequences.

It is but just, however, to state, that the extract we have given is not a fair sample of the two proposed chapters in this particular. It is the only title which is composed entirely without the aid of the existing statutes. Neither do the commissioners themselves consider these chapters, which contain doubtless a great deal of novelty, as specimens, in this respect, of the whole work. They justly consider, that there is a great distinction between statutes regarding electoral franchises and modes of public proceeding, and those which concern private rights more nearly, regulating the distribution of property and the domestic relations. With the former, they have felt themselves at greater liberty to fill up what was wholly unprovided for by the existing letter of the Statute Book, under the idea that these laws are of a character peculiarly simple in themselves, and such as ought to be expressed in a form level to the comprehension of all capacities, leaving little or nothing to be supplied by inference or by mere conjecture. They are besides, careful in every section to point out what is substantially new, and to refer, if it be an old provision newly clad, to the precise source from whence it was derived. They admit that these chapters 'can hardly be called revisions of existing laws,' and consider them rather as suggestions to the legislature in the most convenient form.

With respect to the class of statutes falling under the second general division, namely, 'those which relate to the acquisition, the enjoyment, and the transmission of property, real and personal;

to the domestic relations; and generally to all matters connected with private rights,' the commissioners appear to be duly sensible of the increasing difficulty of their task, and by no means indicate an overweening confidence of success. These are statutes of which they say, 'almost every line has been the subject of judicial interpretation;' and by a salutary provision in the act from which they derive their authority, they are expressly restrained from making any change in the phraseology or distribution of the sections of any statute, that has been the subject of a legal decision, by which its established construction might be affected or impaired. If in this portion of their labor, they should observe the same scrupulous regard to the duty of forbearance as they have thus far to a most diligent and indefatigable exercise of their extensive powers upon the first class of laws, and yet succeed in reducing them into an equally simple and methodical arrangement, they will have achieved a work which will do infinite honor to them and their constituents, and be of great service not only to the profession, but to the community at large. We have little apprehension, from their guarded and deliberate labor, taken in connexion with their known professional learning and practical skill, as well as the specimen they have laid open to our examination, of dangerous innovations; and we believe, that the final completion of this great work will constitute a new 'era of legislation' in New York, the benefits of which will be experienced, ere long, by the necessary force of example, in her sister States, if not in other portions of the civilized world. Yet, not being prepared to go all lengths with the reformers of the day, and perceiving a disposition in the commissioners to exercise their right of suggesting new things to the legislature pretty extensively, we cannot take our leave without recommending moderation in this particular, and reminding them, in the language of Lord Hale, that 'the business of amendment or alteration of the laws is a choice and tender business, neither wholly to be omitted when the necessity requires, and yet very cautiously and warily to be undertaken though the necessity may, or at least may *seem* to require it.'